



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Stanley J. Kopecky
Appl. No.: 10/003,336
Filed: October 31, 2001
Title: PACKAGE HAVING RELEASEABLY SECURED CONSUMABLE
PRODUCTS
Art Unit: 3728
Examiner: T. Arnold III
Docket No.: 112703-208

Commissioner for Patents
Washington, DC 20231

8
E. J. Kopecky
RECEIVED
DEC 18 2002
TECHNOLOGY CENTER R3700
12/20/02

RESPONSE TO ELECTION OF SPECIES REQUIREMENT

Sir:

This Response is submitted in response to the election of species requirement mailed on November 27, 2002.

The election of species requirement requires Applicant to elect between allegedly three species of claims, the species of Claim 1, the species of Claim 15, and the species of Claim 18.

Applicant respectfully submits that this election of species requirement is not proper. Indeed, since the election of species requirement is based solely on the three independent claims pending, it appears that the Patent Office merely is attempting to require Applicant to parse out the application into the independent claims. This is not proper. See MPEP § 806.04(c) "Claims are definitions of inventions. Claims are never species." Emphasis in original. For this reason above, the election is not proper.

The Patent Office's attention is directed to MPEP § 809.02(a) that sets forth what a proper election of species request requires. In part, the MPEP states "The species are preferably identified as the species of Figures 1, 2, and 3 or the species of Examples I, II, and III, respectively." To what figures is the Patent Office requiring an election?

The purpose of a restriction requirement or election of species is to ensure that undue burden is not created to the Patent Office. In this regard, an election of species or restriction requirement allows the Patent Office to search a specific invention in specific classes. Instead, what the Patent Office has done is required Applicant to elect one independent claim which to prosecute. This is not the purpose of the election of species requirement and is not proper.

Moreover, Applicant respectfully submits the Patent Office has not even performed the requisite function in order to determine whether or not an election of species requirement is required. In this regard, no figures are referred to as to be elected with respect to the species. Does the Patent Office contend that the figures do not set forth different species? Further, no claims, except for the three independent claims, are identified as reading of the species. And perhaps most importantly, the Patent Office incorrectly notes that no claims are generic. In this regard, Claim 1 is clearly generic to the species of Claim 15 and Claim 18. Likewise, dependent Claims 2-14 appear generic with respect to each of the species of Claims 15 and 18. Further, Claim 18 appears generic with respect to the species of Claims 1-17.

In fact, it is almost impossible for Applicant to elect a species based on the request posed by the Patent Office as it is possible that all of the claims are generic to each of the asserted species since the Patent Office has not properly defined the species, e.g., identifying appropriate figures, but merely identified three independent claims which is not proper. See, e.g., MPEP § 806.04(c). However, Applicant has not performed this analysis and therefore does not admit that all of the claims are generic or not.

Applicant respectfully requests that the election be withdrawn. Regardless, Applicant elects, with traverse, the species of Claim 1 and request that all of the claims be examined, i.e., Claims 1-20. If the election requirement is not withdrawn, Applicants reserve the right to petition the Patent Office to have same withdrawn.

Respectfully submitted,

BELL, BOYD & LLOYD LLC



BY

Robert M. Barrett
Reg. No. 30,142
P.O. Box 1135
Chicago, Illinois 60690-1135
Phone: (312) 807-4204



3728

TRANSMITTAL LETTER
(General - Patent Pending)

Docket No.
112703-208

In Re Application Of: Stanley J. Kopecky

Serial No.
10/003,336

Filing Date
October 31, 2001

Examiner
T. Arnold III

Group Art Unit
3728

Title:

PACKAGE HAVING RELEASEABLY SECURED CONSUMABLE PRODUCTS

TO THE ASSISTANT COMMISSIONER FOR PATENTS:

Transmitted herewith is:

Transmittal Letter (1 page) (duplicate)
Response to Election of Species Requirement (2 pages)
Return Receipt Postcard

RECEIVED

DEC 18 2002

TECHNOLOGY CENTER R3700

in the above identified application.

- ☒ No additional fee is required.
- ☐ A check in the amount of _____ is attached.
- ☐ The Assistant Commissioner is hereby authorized to charge and credit Deposit Account No. 02-1818 as described below. A duplicate copy of this sheet is enclosed.
- ☐ Charge the amount of _____
- ☒ Credit any overpayment.
- ☒ Charge any additional fee required.

Signature

Dated: December 11, 2002

Robert M. Barrett (30,142)
ATTORNEYS FOR APPLICANTS
Bell, Boyd & Lloyd LLC
P.O. Box 1135
Chicago, Illinois 60690-1135

I certify that this document and fee is being deposited on 12/11/2002 with the U.S. Postal Service as first class mail under 37 C.F.R. 1.8 and is addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231

Signature of Person Mailing Correspondence

Robert Buccieri

Typed or Printed Name of Person Mailing Correspondence

CC: